

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STEVEN WAYNE BENDER,)	
)	Civil Action No. 05 - 998
Petitioner,)	
)	
v.)	Chief Judge Donetta W. Ambrose /
)	Magistrate Judge Lisa Pupo
JAMES WYNDER, Superintendent; THE)	Lenihan
DISTRICT ATTORNEY FOR THE)	
COUNTY OF FAYETTE; and the)	Doc. Nos. 20, 28
ATTORNEY GENERAL FOR THE)	
COMMONWEALTH OF PENNSYLVANIA,)	
)	
Respondents.)	

ORDER

Petitioner in this habeas corpus petition has filed two requests for the Court to appoint an impartial medical examiner. In support of this request, he alleges that the justification for his underlying crime was the fact that the victim was sexually abusing his minor children. He requests this court to order a medical examination as proof of these allegations.

Such an examination would amount to a re-trial of a portion of the underlying action and is not only inappropriate for this Court but outside of its authority. The issue in this petition is the effectiveness of counsel. The Court will review and address that allegation when it addresses the petition. Therefore,

IT IS ORDERED, this 25th day of January, 2006, that Petitioners Requests for the appointment of an impartial medical examiner, Doc. Nos. 20 and 28, are **HEREBY DENIED**.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Rule 72.1.3(B) of the Local Rules for Magistrates. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

1-25-06
Date



Lisa Pupo Lenihan
United States Magistrate Judge

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